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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NAZARETH M. HAYSBERT, an	}	CASE NO.
individual,		
	}	(1) TELEPHONE CONSUMER
Plaintiff,		PROTECTION ACT, 47 U.S.C. §
vs.	}	227, <i>ET SEQ.</i> ;
		(2) FAILURE TO IDENTIFY, 47
NAVIENT SOLUTIONS, INC., a	}	C.F.R. § 64.1200, <i>ET SEQ.</i>
Delaware corporation, and		(3) FAIR DEBT COLLECTION
DOES 1-10,	}	PRACTICES ACT, 15 U.S.C. §
		1692, <i>ET SEQ.</i> ;
Defendants.	}	(4) ROSENTHAL FAIR DEBT
		COLLECTION PRACTICES ACT,
	}	CAL. CIV. § 1788, <i>ET SEQ.</i>
		<u>JURY TRIAL DEMANDED</u>

Plaintiff Nazareth M. Haysbert ("Plaintiff") alleges the following upon information and belief and personal knowledge:

NATURE OF THE CASE

1. Plaintiff seeks damages and any other available legal or equitable remedies resulting from the illegal actions of Navient

1 Solutions, Inc., and other presently unknown parties (“Defendants”) in
 2 negligently, knowingly, willfully, and/or intentionally causing an
 3 automatic dialer to dial Plaintiff’s cellular phone line and negligently,
 4 knowingly, willfully, and/or intentionally using a pre-recorded voice
 5 message in the inception of the same phone calls in violation of the
 6 Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”),
 7 and the Fair Debt Collection Practices Act, 15 U.S.C. § *et seq.*
 8 (“FDCPA”), thereby violating Plaintiff’s statutory rights, and invading
 9 his right to privacy, without his express written, implied, and/or oral
 10 consent.

11 2. Congress enacted the Telephone Consumer Protection Act
 12 in 1991 to “protect the privacy interests” of consumers in response to
 13 the “increasing number of consumer complaints” regarding
 14 “telemarketing calls and communications” made to both residential and
 15 wireless phones.¹ Today, over 91% of American adults own cellular
 16 phones.² Over 39% of adults live in wireless *only* homes with no
 17 landline.³

18 3. The TCPA specifically prohibits the use of automatic dialing
 19 machines to contact consumers on their cellular phones without the
 20 express prior consent of the called party. (47 U.S.C. § 227(b), *et seq.*)
 21 The TCPA also specifically prohibits the use of pre-recorded voice
 22 messages in telephone calls to cellular phones without the called
 23 party’s express prior consent. (*Ibid.*)
 24

25
 26 ¹ Senate Report No. 102-178, October 8, 1991, 1991 U.S.C.C.A.N. 1968; *Id.* at
 1969; *see, also* PL 102-243, December 20, 1991, 105 Stat 2394.

27 ² *See*, [http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-](http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults)
[hits-91-of-adults](http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults).

28 ³ *See*, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf>

1 4. Defendants knowingly and willfully caused an autodialer to
2 dial Plaintiff's cellular phone and/or used a pre-recorded voice message
3 in telephone calls to Plaintiff's cellular phone on at least 100 occasions
4 throughout the four years prior to the filing of this Complaint.
5 Defendants called Plaintiff's cellular phone using various numbers,
6 including 317-550-5612; 765-637-0801; 817-591-7641; 805-080-9234;
7 and 850-023-1111, amongst others presently unknown.

8 5. Defendants called Plaintiff's cellular phones three or more
9 times a day with the intent to harass Plaintiff for the purpose of
10 collecting a debt. Defendants continued to harass Plaintiff by calling
11 him multiple times a day even after Plaintiff demanded Defendants
12 stop calling him.

13 6. For example, on April 8, 2015, Defendants used an
14 autodialer and pre-recorded voice message to use the number 317-550-
15 5612 to call Plaintiff's cellular phone at 8:07 A.M.; 9:25 A.M; and 8:09
16 P.M. The voice message used by Defendants stated the following:

17 "This is an important message for Nazareth Haysbert. This
18 is Jamie Smith with Navient. We need to speak with you as
19 soon as possible. We have some very important information
20 regarding your business with Navient. In going over the
21 file your previously arranged program requires attention.
22 We would encourage you to give our office a call as soon as
possible. . . ."

23 7. Defendants further violated the TCPA by failing to comply
24 with its requirement that "(a)ll artificial or prerecorded voice telephone
25 messages shall: (1) at the beginning of the message, state clearly the
26 identity of the business, individual, or other entity that is responsible
27 for initiating the call. If a business is responsible for initiating the call,
28 the name under which the entity is registered to conduct business with

1 the State Corporation Commission (or comparable regulatory
2 authority) must be stated". (47 C.F.R. § 64.1200(b)(1).)

3 8. Each and every call made by Defendants was made using an
4 auto-dialer and a pre-recorded voice message and was made for the
5 purpose of harassing, annoy, abuse, and oppress Plaintiff to collect a
6 debt assigned to Defendants.

7 9. Plaintiff never consented, either implicitly or explicitly, to
8 be contacted by Defendants in any form, let alone through the use of an
9 automatic dialer and/or pre-recorded voice message for telemarketing
10 purposes.

11 10. Plaintiff did not provide his number during any transaction
12 for which Defendants contacted Plaintiff. Defendants found Plaintiff's
13 number through alternative means unknown to Plaintiff and
14 intentionally called him at that number despite knowing the number
15 was not obtained during any transaction for the purpose of which
16 Defendants called Plaintiff.

17 11. Plaintiff does not have a business relationship with
18 Defendants under the meaning of 47 U.S.C. §§ 227(a)(2); 227(a)(4) that
19 excuses Defendants from the above-described violations of the TCPA
20 and never agreed to be contacted by Defendants with an autodialer or
21 pre-recorded voice message.

22 12. Plaintiff is entitled to statutory damages for Defendants'
23 willful and repeated use of automated dialing systems and/or pre-
24 recorded voice messages to dial Plaintiff's cellular phone for
25 telemarketing purposes without his consent.

26 13. Plaintiff is entitled to statutory damages for each and every
27 TCPA violation, regardless of whether Defendants committed multiple
28 violations within a single phone call.

1 14. The phone calls to Plaintiff's cellular phone wasted
2 Plaintiff's time, invaded his privacy, caused undue annoyance and
3 stress, and wasted the use of a cellular phone service at Plaintiff's
4 expense.

5 15. Upon information and belief, Defendants maintain, or have
6 the ability to maintain, some form of record of when a called party opts
7 out or wishes to no longer be contacted, but Defendants consciously
8 ignore those records. Plaintiff never opted to be contacted by Navient,
9 and Navient Plaintiff's opt-out requests.

10 16. All calls made by Defendants were made through the use of
11 an "automatic telephone dialing system" as defined by 47 U.S.C. §
12 227(a)(1) and in violation of 47 U.S.C. § 227(b)(1)(A).

13 17. All pre-recorded voice messages were "artificial or
14 prerecorded voice[s]" under the meaning of 47 U.S.C. § 227(b)(1)(A).

15 18. Moreover, all of the calls to Plaintiff's cellular phone were
16 calculated to collect a consumer debt under the meaning of the FDCPA
17 and the California Rosenthal Fair Debt Collection Practices Act,
18 California Civil Code §§ 1788 *et seq.* ("Rosenthal Act").

19 19. Defendants at all times were acting as debt collectors under
20 the meaning the FDCPA and Rosenthal Act. Plaintiff at all times was
21 a protected consumer under the FDCPA and Rosenthal Act.

22 20. Defendants violated the FDCPA by violating the TCPA
23 while collecting a debt, which constitutes an harassment, oppression,
24 and abuse under the FDCPA. (15 U.S.C. § 1962d.)

25 21. Defendants violated both FDCPA and Rosenthal Act by
26 repeatedly calling Plaintiff with the intent to annoy and harass for the
27 purpose of collecting a debt. (Cal. Civ. § 1788.11; 15 U.S.C. § 1962d.)

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JURISDICTION

22. This Court has federal question jurisdiction because this case arises out of Defendants' violations of the TCPA, FDCPA and Rosenthal Act upon Plaintiff.

23. Venue is proper because Plaintiff, at the time of the violation, resided and was present in this judicial district, in which Defendants also currently conduct business and have availed themselves to jurisdiction by knowingly and/or willfully violating the TCPA within this judicial district by contacting Plaintiff on his cellular phone.

PARTIES

24. Plaintiff is a natural person who resided in Los Angeles county in the State of California at the time of the violations.

25. Defendant Navient Solutions, Inc., is a Delaware corporation that has availed itself to the jurisdiction of California and this Court by virtue of transmitting telephone calls that violate the TCPA, FDCPA, and Rosenthal Act to Plaintiff's cellular phone while he resided in Los Angeles.

26. All Defendants conduct business in California through the Internet and telephone solicitation, and knowingly violated the TCPA within Los Angeles County.

27. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1-10, who are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names.

28. All of the above named Defendants, and their subsidiaries, agents, officers, directors, and managing agents, are legally responsible for the allegations and damages alleged herein. Plaintiff will seek leave

1 to amend the Complaint to reflect the true names and capacities of the
2 DOE defendants when such identities become known.

3 **FIRST CAUSE OF ACTION**

4 **Violations of the Telephone Consumer Protection Act**

5 **47 U.S.C. § 227 *et seq.***

6 29. Plaintiff repeats and incorporates by reference into this
7 cause of action, every other allegation in this complaint.

8 30. The foregoing acts and omissions of Defendants constitute
9 numerous and multiple violations of the TCPA, including, but not
10 limited to, each and every one of the provisions of 47 U.S.C. § 227 *et*
11 *seq.* cited herein.

12 31. The foregoing acts and omissions of Defendants violate 47
13 U.S.C. § 227(b), providing:

14 “Restrictions on use of automated telephone equipment

15 (1) Prohibitions. It shall be unlawful for any person within
16 the United States, or any person outside the United States if
the recipient is within the United States—

17 (A) to make any call (other than a call made for
18 emergency purposes or made with the prior express
19 consent of the called party) using any automatic
20 telephone dialing system or an artificial or prerecorded
voice—

21 . . .

22 (iii) to any telephone number assigned to a paging
23 service, cellular telephone service, specialized
24 mobile radio service, or other radio common
carrier service, or any service for which the called
party is charged for the call;

25 (B) to initiate any telephone call to any residential
26 telephone line using an artificial or prerecorded voice
27 to deliver a message without the prior express consent
28 of the called party, unless the call is initiated for

1 emergency purposes or is exempted by rule or order by
 2 the Commission under paragraph (2)(B);
 3 (47 U.S.C.A. § 227(b).)

4 32. Defendants further violated the TCPA by failing to comply
 5 with each and every provision of 47 C.F.R. § 64.1200., *et seq.* As a
 6 result of Defendants' violations, Plaintiff is entitled to an award of
 7 either \$500.00 or \$1,500.00 in statutory damages for each and every
 8 violation, pursuant to 47 U.S.C. § 227(b)(3), plus actual damages
 9 according to proof.

10 SECOND CAUSE OF ACTION

11 *Failure to Identify Calling Party*

12 Violation of the Telephone Consumer Protection Act

13 47 U.S.C. § 227 *et seq.*; 47 C.F.R. § 64.1200(b)(1)

14 33. Plaintiff repeats and incorporates by reference into this
 15 cause of action, every other allegation in this complaint.

16 34. Defendants do not maintain a proper written policy for
 17 compliance and do not properly train their personnel. (47 C.F.R.
 18 §64.1200 *et seq.*)

19 35. Defendants violated the TCPA by failing to comply with
 20 each and every provision of 47 C.F.R. § 64.1200., *et seq.*, including the
 21 requirement that Defendants identify themselves by the name used by
 22 Defendants for registration with the Secretary of State. As a result of
 23 Defendants' violations, Plaintiff is entitled to an award of either
 24 \$500.00 or \$1,500.00 in statutory damages for each and every violation.

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1 **THIRD CAUSE OF ACTION**

2 **Violations of the Federal Fair Debt Collection Practices Act**

3 **15 U.S.C. § 1692 *et seq.***

4 36. Plaintiff repeats and incorporates by reference into this
5 cause of action, every other allegation in this complaint.

6 37. Defendants actions violated 15 U.S.C. § 1692 by violating
7 the TCPA while collecting a debt, which constitutes an harassment,
8 oppression, and abuse under the FDCPA. (15 U.S.C. § 1962d.)

9 38. Defendants violated the FDCPA by repeatedly calling
10 Plaintiff with the intent to annoy and harass for the purpose of
11 collecting a debt. (Cal. Civ. § 1788.11; 15 U.S.C. § 1962d.)

12 **THIRD CAUSE OF ACTION**

13 **Violations of the Rosenthal Fair Debt Collection Practices Act**

14 ***Cal. Civ. § 1788 et seq.***

15 39. Plaintiff repeats and incorporates by reference into this
16 cause of action, every other allegation in this complaint.

17 40. Defendants violated the Rosenthal Act by repeatedly calling
18 Plaintiff with the intent to annoy and harass for the purpose of
19 collecting a debt. (Cal. Civ. § 1788.11.)

20 41. Defendants violated the Rosenthal Act intentionally
21 violating the TCPA for purposes of collecting a debt.

22 **PRAYER FOR RELIEF**

23 42. WHEREFORE, Plaintiff requests judgment against
24 Defendants and for the following:

- 25 I. As a result of Defendants' violations of 47 U.S.C. §
26 227, *et seq.*, Plaintiff is entitled to and requests \$500
27 in statutory damages per violation, or \$1500 in
28

1 statutory damages per violations that were at least
2 willful or knowingly committed;

3 II. As a result of Defendants' violations of *Cal. Civ. § 1788, et*
4 *seq.*, Plaintiff is entitled to \$100.00 to \$1,000.00 per
5 violation plus reasonable attorney's fees.

6 III. As a result of Defendants' violations of 15 U.S.C. § 1692, *et*
7 *seq.*, Plaintiff is entitled to \$1,000.00 per violation plus
8 reasonable attorney's fees.

9 IV. For Defendants to be enjoined from engaging in
10 further violations of 47 U.S.C. § 227, *et seq.*;

11 V. For actual damages according to proof;

12 VI. For costs and attorney's fees;

13 VII. And for any other relief that the Court deems just.
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15 June 2, 2015 By */s/Nathaniel Clark*
16 Nathaniel Clark, Esq.
17 Seaton Tsai, Esq.
18 *ATTORNEY FOR PLAINTIFF NAZARETH M. HAYSBERT*
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